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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,476	12/18/2001	Jonah Shacknai	00-40175-US-P	4300

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 08/08/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Examiner

Applicant(s)

Group Art Unit

10
022476

MBL Long

Shacknai et al

1676

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

P r i d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 6/26/03
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disp sition of Claims

- ☒ Claim(s) 1-115 is/are pending in the application.
- Of the above claim(s) 4, 9, 13, 15, 25, 27, 30-115 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-3, 5-8, 11-12, 14, 16-24, 28, 29 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-115 are subject to restriction or election requirement.

Applicati n Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).
- *Certified copies not received: _____

Attachm nt(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 5, 7, 10, 12
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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Applicant's election without traverse of group I, non-cleansers, sodium salfacetamide, gum in Paper No. 11 is acknowledged.

It is noted that applicants' elections are made with assumption of examination of non elected species, if elected species are found, as applicant claims they are, allowable; and that applicant does not embrace examiners bases for restriction.

Claims 30-57, 59-115, 4, 9, 13, 15, 58, 25, 27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 11.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 10, 11, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Pence-3634264.

See example II -the instant methods of applying to the skin a sulfur derivative, a dermatologically acceptable carrier, treated cutaneous Mites. It was washed off after 5 minutes. Organic salts, sulfuric acid, the sodium salt, (example 2) and sulfites (col.3,

lines 27-39) are used, at the instant concentration Mites were treated, in an aqueous base, with "a high sorption base", not further limited by applicant, as fat cellosoline (col.3, lines 60-62).

Claims 1, 2, 5-8, 10, 11, 14, 17, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Suzuki-JP 3-002124.

Sulfur, at the instant concentration and PH, with aqueous solution of high sorption base (example 15, p.9) is applied to skin, and is easily removed by washing with water (p.13). This is the instant method as claimed; the sufficient to treat Mites, if they are present, and prevent their effects, if they are not yet present. ^{Selenium} ~~Selenium~~ sulfide Cd sulfide (p.5) are also addable, as is thiantol allantion, and other sulfur derivates.

Claims 1-3, 10-12, 14, 17, 18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Harry-73.

Here too, ~~we~~ immediately envision application of the respective S compounds, to the skin, followed thereafter, by washing. Since the compositions are applied to the skin, within which a Mite effective treatment amount is present, then the instant methods are met, as Mites could be the unrecognized bases for the perceived need for use for each of Harry's composition.

See for example (p.560) sulfacetamide with high sorption about 70% (collidal sulfur) base. Since many of the compositions can cause burning (p.560) clearly at such point they would be washed off, and re-washed, if pain persisted. Sulfur.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-8, 10-12, 14, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki or Harry in view of Bonnar et al '93, Lin et al 88 and Kligman-4752472.

See above, for application, skin of enough sulfur and sulfur derivatives, to treat Mites; Bonnar shows they are always present on people (p.445, last paragraph col.1); thus it is obvious that the instant methods, shown by the cited references, are accompanied by treating Mites, as they are generally present.

Lin also shows sulfur use, including 10% sulfacetamide preparations (p.556) to control Demodex (p.555, Table III). Here, we also see bentonite, a Kaolin clay (Table IV) and gum-balsam Pem. Finally, Kligman (col.1, lines 29-33) show Demodex present in cutaneous disorders treated as by the cited art.

Claims 1, 10-12, 14, 17-23, 24, 26, 28, 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Bhagwat et al 6429231.

The instant application is a cip, treating Mites.

The reference provides the methods as are instantly claimed, without recognizing that the methods would in fact treat Mites. However, the methods as claimed are shown: see example 2, 10% sulfacetamide, a sufficient concentration to treat Mites is presented. These, are applied to the skin (col.3, top, col.3, line 65-col.4, line 5, col.5 lines 18-52). Xanthn gum Kaolin (bentone clays) are shown (col. 4, lines 47-55) and

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silica, at 0.05 to 30% (col.4, top). Table 2 shows about 40% water. Magnesium aluminum silicate is at Table 2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd
July 29, 2003



NEIL S. LEVY
PRIMARY EXAMINER